

INTERNAL REVENUE SERVICE

Midstates Region

Department of the Treasury

Appeals Office
[REDACTED]

Date: [REDACTED]

Person to Contact:
[REDACTED]

Telephone Number:
[REDACTED]

Key District: [REDACTED]

Years: [REDACTED]

Dear Sir:

We considered your appeal of the adverse action proposed by your key District Director. Your exemption from Federal income tax under Section 501(c)(4) of the Internal Revenue Code is denied.

Your denial is based primarily on the fact that your organization primarily serves the private interests of your members by maintaining their property. Any benefits to the community are not sufficient to meet the requirement that an organization described in section 501(c)(4) of the Code be operated primarily for the common good and general welfare of the people of the community.

You are required to file Federal income tax returns on Form 1120 for the above years. You should file these returns with your District Director, Dallas Key District Office, EP/EO Division, within 60 days from the date of this letter, unless a request for extension of time is granted.

You may direct questions about the decision to the appeals officer whose name and telephone number are shown above.

Sincerely,
[REDACTED]
[REDACTED]

Associate Chief, Appeals

cc: [REDACTED]

Internal Revenue Service

Department of the Treasury

District

Director

Date: MAR 04 1994

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have completed our consideration of your application for tax-exempt status under section 501(a) of the Code as an organization described in section 501(c)(4).

You were incorporated [REDACTED] as a non-profit corporation. According to your Articles of Incorporation you are organized for the purpose of providing for maintenance and preservation of the properties subject to the Declaration of Covenants, Conditions and Restrictions applicable to a portion of [REDACTED], Section [REDACTED], a subdivision in [REDACTED], to be recorded in the Official Public Records of Real Property of [REDACTED], hereinafter called the "Declaration", that portion being defined as [REDACTED] and being all properties lying south of [REDACTED], west of [REDACTED], north of [REDACTED], and east of [REDACTED] all being a portion of the [REDACTED] development, and any additional properties that may hereafter be made subject to the Declaration and to promote the health, safety and welfare of the residents within the above described property.

[REDACTED] is a mixed use commercial subdivision composed of hotels, restaurants, office buildings, parking garages, retail stores, and a daycare center. [REDACTED] covers [REDACTED] acres.

You were formed by the developer of [REDACTED]. According to the Declaration of Covenants, Conditions and Restrictions, the developer deemed it desirable, for the efficient preservation of the values and amenities in said subdivision, to create an association to which shall be delegated and assigned the powers of administering and enforcing these assessments, conditions, covenants, easements, reservations and restrictions, including levying, collecting and disbursing the assessments. The Declaration further states that the development company desired to subject the property ([REDACTED]) to the assessments, conditions, covenants, easements, reservations, and restrictions hereinafter set forth, for the benefit of the property, additions thereto, and each owner of any part thereof.

[REDACTED]

You are a membership organization. Members are those persons or entities who are record owners of property within [REDACTED]. Membership is mandatory. Members have voting rights in accordance with land use and the number of voting units. A voting unit is [REDACTED] square feet. Hotels and office buildings have [REDACTED] votes for each voting unit and retail establishments have [REDACTED] vote for each voting unit. Assessments levied by you, according to the Declaration of Covenants, shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of your members and, in particular, may include maintenance of any common area, parkways, esplanades, pedestrian walkways, plazas and entryways, police and security service, fire protection, emergency medical service, street cleaning, street lighting, mosquito control and other services as may be in the property's interest.

Within [REDACTED], you provide street lighting, and landscaping and maintenance of esplanades, common areas and greenbelts, including sidewalks, plazas, benches and bridges. You pay the utility expenses for lighting, sprinklers and landscaping. You contract with a management company for the provision of certain administrative and management services. The management company monitors and enforces deed restrictions and architectural review. For the period [REDACTED] through [REDACTED] your expenses were grounds maintenance \$[REDACTED], general and administrative \$[REDACTED], utilities \$[REDACTED], and management and deed restriction enforcement of \$[REDACTED]. You have a replacement fund of \$288,664 which you indicate is for future major repairs and replacements of furniture, planters, sidewalks, pedestrian covers, monuments, trees, jogging trails and other landscaping replacement

Section 501(c)(4) of the Internal Revenue Code provides exemption for:

"Civic Leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare..."

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that:

"An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements."

Revenue Ruling 75-286, 1975-2 C.B. 210 held that an organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block, thereby benefiting the community as a whole as well as enhancing the value of its members' property rights, qualified for exemption under section 501(c)(4). Such an organization

[REDACTED]

must overcome the presumption that it is operated primarily for the benefit of its members. Most of the property improved and beautified by the organization in RR 75-286 was public or city property, that is, the adjacent part of the public roadway lying between the street and sidewalk. Support for the organization was from donations and fundraisers. Activities included providing funds to the city to plant trees and picking up litter in the streets. Because the property maintained was but one city block in a public street, many people who were neither residents or business operators on the block would benefit from the beautification activities as they pass through the area.

You maintain that you should qualify for exemption because the facilities and areas you maintain are open to the general public, because you do not provide exterior maintenance on residences, and because your activities benefit the general public. You cite Revenue Rulings 74-99 and 80-63, which specifically addresses the exemption qualifications of homeowners associations.

Your activities include the maintenance of areas which are adjacent to or in the close proximity of the businesses located in the confines of a private commercial business development and the enforcement of deed restrictions and architectural controls within the development.

We recognize that there may be some community benefit in that members of the general public, other than tenants, employees and customers of the businesses located in [REDACTED], may frequent the common areas you maintain. Also, maintaining the appearance of the development may have some carry benefit to the general community around the development. However, we believe your operations primarily serve the private business interests of [REDACTED] and the businesses located therein. Maintaining the common areas adjacent to and within the development serve to preserve the appearance and appeal of the area as a desirable place to do business. It also serves to enhance the property values of the businesses. Further, your enforcement of deed restrictions and architectural control serves to benefit [REDACTED] by maintaining the integrity of the development. Maintaining the landscaping and other surrounding areas are common expenses for businesses, especially for hotels, restaurants and retail stores. In your case those activities and expenses are carried on and incurred on a collective basis rather than an individual one. The businesses in [REDACTED] pay those expenses in proportion to the amount of land each owns.

We believe your operations are clearly distinguishable from those of the organization described in Revenue Ruling 75-286. In your case, participation is not voluntary and you are supported by mandatory assessments rather than voluntary donations. You represent the occupants of a particular business development unlike the membership of the organization described in the ruling, which included the unrelated residents and businesses of a city block. In that

case, it could not be said that the operation served the interests of a particular business development. Also, in that ruling the organization maintained city property rather than private property.

We also believe you are clearly distinguishable from the organizations described in Revenue Rulings 74-99 and 80-63 largely because those rulings deal only with homeowners associations and the circumstances which are unique to them. However, even a homeowners association will not qualify for exemption if it is primarily engaged in activities which serve a private interest. As stated above, even though your common areas may be open to the general public, as would normally be the case with a business development, we believe the public benefit derived from that is incidental to the private business benefit you serve.

Accordingly, because we have determined that you are not primarily engaged in promoting the common good and general welfare of the people of the community, tax-exempt status under section 501(c)(4) of the Internal Revenue Code is denied. You should continue filing federal income tax returns.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, you may contact the person whose name, number and address appear on the top of this letter.

Sincerely,



District Director

Enclosures:
Publication 892
Form 6018